



# California Fair Political Practices Commission

November 29, 1989

Lance H. Olson  
Olson, Connelly, Hagel & Fong  
300 Capitol Mall, Suite 350  
Sacramento, CA 95814

Re: Your Request for Advice  
Our File No. A-89-633

Dear Mr. Olson:

This is in response to your request for advice concerning the activities of the California Democratic Party in upcoming special elections and its duties under the Political Reform Act (the "Act").<sup>1</sup>

## QUESTION

Does the Act impose limits upon the California Democratic Party's (the "Party") receipt of contributions and its expenditures at the behest of candidates for the following communications to Party members in connection with an upcoming special election:

1. Direct mailings which convey information on candidates and urge recipients to vote for the Party's endorsed candidate.

2. An absentee voter program in which Party members will be contacted by mail, telephone or in person and urged to vote for the Party's endorsed candidate. The mailings will include absentee voter registration forms and instructions.

3. A get-out-the-vote program in which Party members will be contacted by mail, telephone or in person and urged to vote for the Party's endorsed candidate.

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<sup>1</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

### CONCLUSION

Pursuant to the preliminary injunction filed on May 19, 1989 in the case of Service Employees International Union, et al. v. Fair Political Practices Commission, U.S. District Court, Eastern District of California, Case No. CIVS 89-0433 LKK-JFM, the Act's contribution limits do not apply to the Party's communications with its members, even if the Party's expenditures on the communications are made at the behest of candidates.<sup>2</sup> However, the Act's contribution limits continue to apply to contributions made to the Party for the purposes of making these communications.

### FACTS

The Party is considering supporting candidates to fill the now-vacant 27th Assembly District and 39th Senate District seats. The special election for these seat will take place on December 5, 1989 and, if necessary, runoff elections will be held on January 30, 1990.

The Party desires to expend money in making several types of communications to its members in connection with these elections. Among these communications will be direct mailings, telephone contacts, and in-person contacts, which will urge members to vote for the Party's endorsed candidates. The communications will provide information on the candidates, encourage members to vote, and provide absentee voter registration forms and instructions.

All of the Party expenditures in connection with these communications will be made after consultation with the endorsed candidates.

### ANALYSIS

The Act imposes limits on contributions by political parties to candidates, both on a fiscal year basis (see Section 85303) and on a special and special runoff election basis (see Section 85305). The Act also limits contributions to a political party if the party intends to use the funds to make its own contributions to candidates. (See Section 85302.)

Section 82015, states that an expenditure made at the behest of a candidate is a contribution to that candidate.

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<sup>2</sup> The Commission is considering the amendment of Regulation 18215 at its December 13, 1989 meeting. If adopted, this amendment will exempt expenditures for certain communications related to voter registration and get-out-the-vote drives from the definition of contribution. A copy of the proposed amendment to Regulation 18215 is enclosed.

Regulation 18225 states that an expenditure includes a monetary or nonmonetary payment by an official committee of a political party made to influence the action of voters for or against the election of a candidate. (See Regulation 18225(a)(1) and (a)(2).)

Regulation 18215(b) defines "made at the behest" as:

[A] payment made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, or at the request or suggestion of a candidate....

On the basis of those provisions, any expenditure made by the Party for the benefit of and in consultation with a candidate constitutes a contribution to that candidate. Under the facts you have presented, all of the expenditures the Party intends to make in communicating with its members will be made after consultation with candidates who will benefit from them. Accordingly, the contribution limits of Section 85305.<sup>3</sup> In addition, any contributions to the Party that will be used to make these expenditures are subject to the limits of Section 85302.

However, on May 19, 1989 a preliminary injunction was filed in the case of Service Employees International Union, et al. v. Fair Political Practices Commission, U.S. District, Court Eastern District of California, Case No. CIVS 89-0433 LKK-JFM, which enjoined some of the Commission's enforcement duties under the Act (copy enclosed). Among the matters enjoined was the Commission's duty to enforce the contribution limits of Section 85301 of the Act to the extent these limits interfered with a membership organization's ability to communicate with its members. While the preliminary injunction technically applies only to the limits of Section 85301 and not those of Section 85303 (which apply to contributions by political parties), the Commission views political parties as membership organizations. Therefore, to avoid possible violation of the court order, the Commission views the preliminary injunction as extending to communications from political parties to their members. Until the order has been modified by the court, the Commission will not enforce the Act's contribution limits when these types of communications are made.

Please note, however, that party expenditures of this nature continue to be contributions for the reporting purposes of the Act. (See Sections 84100-84400.) The May 19, 1989 preliminary injunction did not address Section 85302's limits on contributions received by a political party for communications with its members.

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<sup>3</sup> The contribution limits of Section 85303 also apply if an expenditure occurs outside a special or special runoff election cycle.

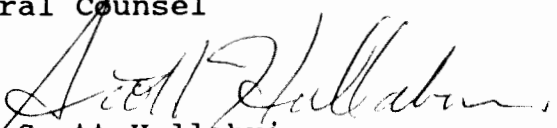
Therefore, the Commission will continue to enforce Section 85302's limits when funds are given to a political party to make its own contributions to candidates.

At your request, we are mailing a copy of this letter to Charles H. Bell, Jr., attorney for the California Republican Party. As you are aware, Mr. Bell recently requested advice from the Commission similar to that requested in your letter. We will provide you with a copy of our reply to Mr. Bell.

If you have any questions, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan  
General Counsel

  
By: Scott Hallabrin  
Counsel, Legal Division

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Enclosures

Law Offices of  
OLSON, CONNELLY, HAGEL & FONG FPPC

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October 31, 1989

Kathryn E. Donovan  
General Counsel  
Fair Political Practices Commission  
428 J Street, Suite 800  
Sacramento, CA 95814

**Re: Expedited Request for advice:  
California Democratic Party.**

Dear Ms. Donovan:

This office represents the California Democratic Party (Party). On behalf of the Party, we request advice concerning certain provisions of the Political Reform Act pursuant to Government Code §83114(b).

The Party is an unincorporated non-profit association made up of more than six million California registered Democrats who share similar views on many public issues. In an effort to promote shared political values, the Party communicates with its members and seeks to elect Democrats to a wide range of public offices. Pursuant to Party by-laws, all Democrats may participate in the Party.

The Party is considering supporting candidates to fill the now-vacant 27th Assembly District and 39th Senate District seats. The special election for these offices will take place on December 5, 1989, and January 30, 1990, if a runoff election is necessary. With respect to these special elections, the Party would like to be able to communicate with its members in several ways, including the following:

1. The Party plans to engage in a direct mail campaign, which will convey information on the candidates for the vacant seat, and urge the recipients to vote for the Party endorsed Democratic candidate.
2. The Party plans to establish an absentee ballot program. As part of this program, the Party will contact members by mail, phone, or in person and distribute absentee voter registration forms, along with instructions.

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LANCE H. OLSON  
BRUCE J. HAGEL  
LEROY Y. FONG  
ROBERT E. LEIDIGH

OF COUNSEL  
LLOYD G. CONNELLY, *Member*  
*California State Legislature*

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When mailing, phoning or contacting in person, the Party will urge its members to vote for the Party endorsed Democratic candidate.

3. The Party plans to engage in a Get-Out-the-Vote campaign. As part of this campaign, the Party will contact members by phone, mail, or in person, and urge them to vote for the Party endorsed Democratic candidate.

We would like to know if there is any limit on the amount of money the Party can receive for or spend on the activities described above. In answering this question, we would ask you to consider the fact that the United States District Court for the Eastern District of California has enjoined enforcement of Government Code § 85301(a) "to the extent that it is interpreted by regulation to interfere with a union's or membership organization's communications with its members." Service Employees International Union, AFL-CIO v. Fair Political Practices Commission (No. CIVS-89-0433 LKK-JFM) Order Granting Motion for Preliminary Injunction, p.5 (May 19, 1989).

We also ask that you consider the Commission's September 1, 1989 MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO CALIFORNIA DEMOCRATIC PARTY'S MOTION FOR PRELIMINARY INJUNCTION, filed in the same case, which states:

[U]nder the preliminary injunction currently in effect in this case . . . , Proposition 73's contributions limits are specifically not applicable to expenditures for communications by membership organizations to their members. Therefore, to the extent that the Party expenditures for communications to its members may be contributions to candidates and subject to Proposition 73's limits, there is no need for a preliminary injunction because one is already in place.  
(Id. at 4.)

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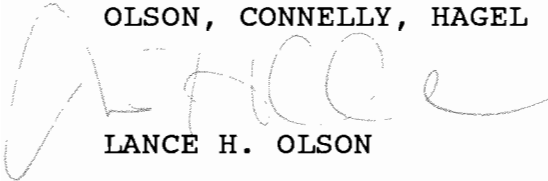
We would also reference the following language in the same memorandum:

With the application of Proposition 73's contribution limits understood, it is clear that there is only one situation in which Proposition 73 places contribution limits upon voter registration, get-out-the-vote and other political communications by the Party. That is where the Party, at the behest of a candidate, makes an expenditure for one of these activities that clearly identifies that or another candidate and which is aimed at non-members of the Party. (emphasis added) (Id. at 7.)

In view of the shortness of time before the elections, we would request an expedited response to our questions.

Very truly yours,

OLSON, CONNELLY, HAGEL & FONG



LANCE H. OLSON

LHO/jph  
cc: Governor Jerry Brown



# California Fair Political Practices Commission

November 2, 1989

Lance H. Olson  
Olson, Connelly, Hagel & Fong  
300 Capitol Mall, Suite 350  
Sacramento, CA 95814

Re: Letter No. 89-633

Dear Mr. Olson:

Your letter requesting advice under the Political Reform Act was received on October 31, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Scott Hallabrin an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

*Kathryn E. Donovan*  
Kathryn E. Donovan  
General Counsel

KED:plh